State of Arkansas

ARKANSAS DEVELOPMENT FINANCE AUTHORITY

ADFA
ARKANSAS DEVELOPMENT FINANCE AUTHORITY

Neighborhood Stabilization Program 3*

Policies and Procedures Manual

August 2011*

**An addendum to the Neighborhood Stabilization Program (NSP) Policies and Procedures Manual of June 2009.*

EQUAL HOUSING OPPORTUNITY

Arkansas Neighborhood Stabilization Program 3 (NSP3)

Policies and Procedures Manual

I. Introduction

The Neighborhood Stabilization Program (NSP3) for State of Arkansas is authorized by section 1497 of the Wall Street Reform and Consumer Protection Act of 2010 (Pub. L. 111-203 (July 21, 2010)) (Dodd-Frank Act), title XII of Division A of the American Recovery and Reinvestment Act of 2009 (Public Law 111-5 (February 17, 2009)) (Recovery Act) and sections 2301-2304 of the Housing and Economic Recovery Act of 2008 (Public Law 110-289 (July 30, 2008)) (HERA). The NSP3 is administered by the U.S. Department of Housing and Urban Development ("HUD") and is considered a special Community Development Block Grant ("CDBG") allocation. CDBG allocations for Arkansas are administered by statute by the Arkansas Economic Development Commission ("AEDC"). Arkansas was allocated $5,000,000 in NSP3 funds by HUD.

Arkansas Development Finance Authority ("ADFA") has been designated by AEDC as administrator of NSP3 funds for the State of Arkansas. This designation is by virtue of a Memorandum of Understanding (MOU) executed by AEDC and ADFA dated October 7, 2008, and as amended on February 1, 2011.

ADFA will administer NSP3 effectively and efficiently under the housing conditions that exist in the State of Arkansas (the "state") and with all practical safeguards against waste or fraud. ADFA will practice and advocate innovation, flexibility, and expansion in program design to address unmet housing needs and to address properties that are both foreclosed and vacant throughout the state. To that end, this policy and procedures manual is presented to provide an overview of ADFA policies and procedures as they pertain to NSP3 and step-by-step guidance on the implementation of NSP3 projects in the State of Arkansas. This manual is organized into the following sections:

- II. Purpose of the Neighborhood Stabilization Program
- III. General Requirements of NSP3
- IV. The NSP Rental Housing Program
- V. Glossary
- VI. Appendix I (Needs Score)

This manual is an addendum to the Neighborhood Stabilization Program (NSP) Policies and Procedures Manual of June 2009 intended to implement the funding and revisions to the NSP Program as required by the Dodd-Frank Act.

This manual is not meant to be a substitute for NSP regulations, but as a supplement to them. It is not exhaustive regarding all considerations affecting the use of NSP3 funds. While careful consideration and due care has been used in developing the manual, NSP3 participants are encouraged to consult with ADFA staff to ensure correct interpretation of policies and regulations. ADFA reserves the right to implement additional policies as needed.

II. Purpose of the Neighborhood Stabilization Program

The Neighborhood Stabilization Program (NSP3) is authorized by section 1497 of the Wall Street Reform and Consumer Protection Act of 2010 (Pub. L. 111-203 (July 21, 2010)) (Dodd-Frank Act), title XII of Division A of the American Recovery and Reinvestment Act of 2009 (Public Law 111-5 (February 17, 2009)) (Recovery Act) and sections 2301-2304 of the Housing and Economic Recovery Act of 2008 (Public Law 110-289 (July 30, 2008)) (HERA). and requirements contained in the HUD Federal Register Notice published October 19, 2010 (Docket No. FR-5447-N-01) (NSP3 Notice); the Dodd-Frank Act; the Recovery Act; HERA; the Grantee's application for NSP3; the HUD regulations at 24 CFR Part 570 (as modified by the NSP3 Notice as now in effect, and as my be amended from time to time) (Regulations).

The primary purpose of NSP3 is to provide emergency assistance for the State to acquire and redevelop properties, that are both foreclosed and vacant, that might otherwise become sources of abandonment and blight within their communities. Arkansas' NSP3 program provides loans to purchase residential properties that are both foreclosed and vacant and to rehabilitate, and redevelop in order to stabilize neighborhoods and stem the decline of property values in the surrounding neighborhood.

As the administrator of the State of Arkansas' NSP funds, ADFA has designated its program funds for new construction, or acquisition and rehabilitation, of residential properties that are both foreclosed and vacant for the development of affordable rental housing.

The NSP 3 Program is not intended to be distributed on a statewide basis as NSP 3 Federal regulations require that only properties in areas of greatest needs as determined by HUD be awarded NSP 3 Funds.

III. General Requirements of NSP3

A. Allocation of Funds

NSP3 funds committed to the State of Arkansas will be allocated as promulgated in these policies and procedures in the State of Arkansas' 2011 Amendment to the Consolidated Plan. In addition, the state may spend up to ten percent (10%) of its NSP allocation and 10% of any program income for administrative and planning expenses.

ADFA anticipates that the amount of funds that will be applied for and approved will vary with the needs and capacity of local organizations in different areas of the state. ADFA is required to ensure that funds are used to address the areas of greatest need in terms of foreclosure as defined and established by HUD. Therefore, ADFA will review and rank applications based on the Proposal Scoring Criteria outlined in the Consolidated Plan Amendment for NSP3 and attached as Appendix I to this document. See also Section C "Application Selection Criteria" below.

In addition, ADFA is required to ensure that 50% of the NSP3 funding is expended within two (2) years and 100% of NSP3 funding must be expended within 3 years of the execution of the NSP3 grant agreement with HUD, which occurred on March 11, 2011. Therefore, ADFA reserves the right to award funds to projects that are "ready to go" and to further adjust contracted amounts based upon actual performance and progress to meet the expenditure deadlines.

The NSP 3 Program is not intended to be distributed on a statewide basis as NSP 3 Federal regulations require that only properties in areas of greatest needs with the highest rates of foreclosure, as defined and established by HUD, be awarded NSP 3 Funds.

B. Eligible Applicants

NSP3 funding is potentially available statewide to entitlement cities, participating jurisdictions, ADFA-designated Community Housing Development Organizations ("CHDOs"), non-profit organizations, for-profit organizations, developers, units of local government provided the entity is in good standing with ADFA, the State of Arkansas, and the applicants' respective regulating agencies. HUD has established the minimum need element that must be evidenced in order to be an eligible applicant. Applicant must show that the census tract in which the proposed development is located has a HUD determined needs score of **twelve (12) or greater** (to be eligible).

A letter of support from the chief elected official (CEO) of the applicable local jurisdiction must be provided with each application for NSP3 funds.

The eligible applicant is the entity responsible for the NSP3 application, project development, project implementation, and accountability for uses of all NSP3 funds. The eligible applicant must adhere to required compliance and monitoring of all NSP3 activities for the full applicable affordability period. ADFA will allocate NSP3 funds to an approved eligible applicant as outlined in the NSP3 Program Agreement.

C. Application Selection Criteria

ADFA will only consider applications applying for assistance for proposed developments in eligible census tracts. NSP3 funds awarded in Arkansas will be allocated on the basis of established need, capacity of the applicant, financing, ultimate neighborhood stabilization goals and quality of plan of the complete applications received by ADFA by application deadline. As mandated by NSP3 regulations, priority in Arkansas is given to the areas having the greatest instance of foreclosures. Since NSP3 funds are intended to stabilize neighborhoods, ADFA has designated the areas of greatest need based upon HUD needs scores and LISC data. NSP3 funds may not be used in areas not designated as areas of greatest need as designated by HUD. The NSP3 funds are not intended and shall not be used for properties that are a part of new developments which were overbuilt as determined by ADFA. ADFA reserves the right in its sole and absolute discretion to determine the level of existing neighborhood destabilization when considering proposals.

The Proposal Scoring Criteria includes the following:

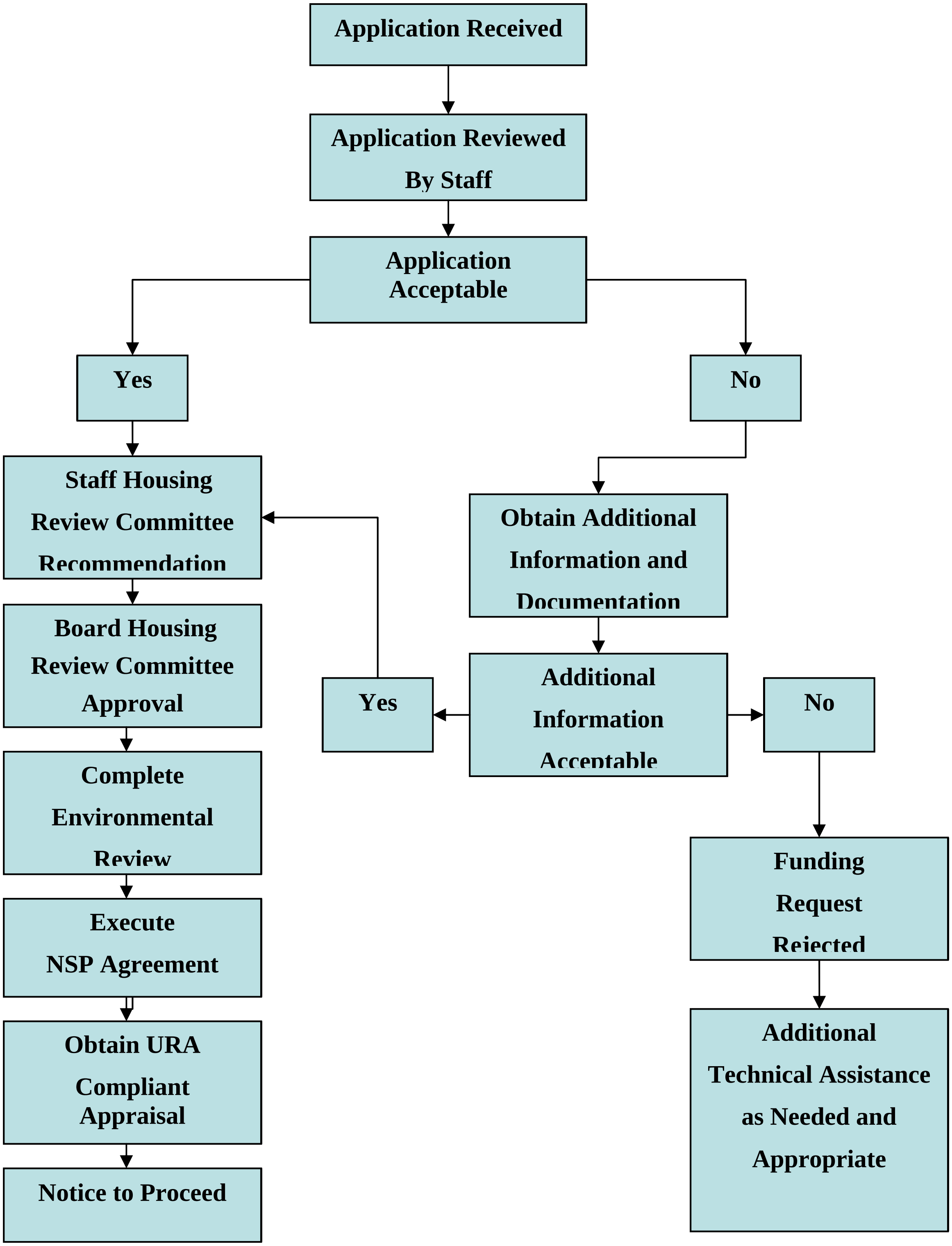
1. **Need** – The proposal must clearly demonstrate the specific areas to be assisted and the rationale for why this area and the specific properties have been or will be negatively impacted by foreclosure activity.
2. **Capacity** – The proposal must provide substantial information on the identity, location, and capacity of ALL partners who will be participating in NSP3 activities. The proposal must also fully demonstrate the ability of the applicant(s) to satisfactorily complete the proposed eligible NSP3 activities within specified time lines. The applicant must provide specific examples of successful completion of the same or similar activities using LIHTC, HOME, or other federal housing resources.
3. **Financing** –The proposal must clearly delineate the TOTAL resources expected to be used to complete the NSP3 activities proposed, including the exact amount of NSP3 funds requested in the proposal. All funding sources must be documented by firm financial commitments of the proposed amounts and uses of the funds.
4. **Quality of plan –** The proposal should clearly demonstrate the overall feasibility of the planned activities, the extent of need exhibited by the proposal and the extent to which those identified needs are addressed by the proposal, the partnering of various entities to provide additional supportive housing services where needed, and the inclusion of appropriate entities to complete the planned activities.
5. **Ultimate neighborhood stabilization goals** – The proposal should demonstrate the level of expected production and outcomes which result in increased neighborhood stabilization. Include the number of assisted units as compared to the number of units needing assistance in a defined area and the period of time for which applicant agrees to maintain the development as affordable housing beyond that which is required.

D. Application Deadlines

ADFA will receive applications through **Friday**, **October 21, 2011 until 4:30 p.m.** ADFA staff will review, evaluate, score, and make recommendations for approval to ADFA's Board of Directors for consideration at its regularly scheduled meeting on **Thursday, December 15, 2011.** If additional information is required by staff, the applicant must submit the documentation within thirty (30) calendar days of ADFA request.

ADFA will develop and execute NSP agreements, committing NSP funds to the selected applicants by January 15, 2011. Dependent upon the level of demand and award of NSP funds, ADFA reserves the right to extend the referenced time lines or establish additional funding rounds as necessary.

NSP3 Application Process Path



Note: Board Housing Review Committee approval, contingent upon acceptable URA appraisal.

E. Application Technical Assistance

Applicants may receive technical assistance by attending an informational training session prior to submitting an application. Sessions will address NSP3 and ADFA guidelines as well as application procedures. ADFA staff is also available to meet with applicants to provide technical assistance. Applicants must contact ADFA staff to establish a mutually convenient date, time, and venue.

F. Amendments to Applications

Any changes to any material aspect of the application, proposed development, or proposed activities must be presented as an amendment to the initial application for NSP3 funds. The request for amendment will go through the normal review and approval process as outlined in the "NSP3 Application Process Path" of this manual and be completed within the previously specified required timeframes.

G. Eligible Activities

ADFA will distribute NSP3funds for the following eligible activities:

1. Acquisition and rehabilitation of residential properties that are both foreclosed and vacant for rental purposes;
2. Reasonable developer's fees related to NSP3-assisted housing rehabilitation or construction activities; developer's fee cannot exceed 10% of the total allocation amount.
3. New construction of rental housing developed on foreclosed land for rental purposes;
4. General administration and planning activities.

For purposes of implementing the NSP3, a **foreclosed property** is defined as a property that, under state or local law, has a completed mortgage or tax foreclosure process and is currently owned by the lender or mortgagee. A foreclosure is not considered to be complete until after the property title has been transferred from the former owner under a foreclosure proceeding or transfer in lieu of foreclosure.

These and other definitions may be found in the Glossary at the end of this manual.

NSP3 Eligible Use*	CDBG Eligible Activities	Type(s) of Properties
B) Purchase and rehabilitate homes and residential properties that have been foreclosed upon, in order to rent, or redevelop such homes and properties	■ Acquisition ■ Disposition ■ Relocation ■ Eligible rehabilitation and preservation activities for homes and other residential properties	Foreclosed or vacant residential properties only
E) Redevelop *demolished* or *vacant* properties	■ Acquisition ■ Disposition ■ Relocation ■ New housing construction	Any, but property must be vacant

*NSP Eligible Use A – Financing Mechanisms is not an eligible use under the Arkansas NSP3.

*NSP Eligible Use C - Land Banking is not allowed under the Arkansas NSP.

H. Meeting the Low-Moderate-Middle Income (LMMI) National Objective

All NSP3-funded activities must meet HERA's Low-Moderate-Middle Income (LMMI) National Objective, which means to primarily benefit LMMI households. LMMI households are defined as households whose incomes do not exceed 120% of area median income, adjusted for family size (measured as 2.4 times the current Section 8 income limit for households below 50% of area median income, adjusted for family size). All households assisted using NSP3 funds shall have incomes which do not exceed 120% of area median income, adjusted for family size.

NOTE that if funding is used in areas that are CDBG entitlement communities (e.g., Bentonville, Conway, Fayetteville, Fort Smith, Hot Springs, Jacksonville, Jonesboro, Little Rock, North Little Rock, Pine Bluff, Rogers, Springdale, Texarkana, and West Memphis), area median income limits issued for that area apply (as opposed to the statewide limit).

Documentation that the national objective has been met must be completed when the project is funded. The income of each household will be determined and documented using the Part 5 (Section 8) definition of income identified in HUD's "Technical Guide for Determining Income and Allowances for the HOME Program" published in January 2005. This guide can be found at the following link:
http://www.hud.gov/offices/cpd/affordablehousing/library/modelguides/1780.cfm.

For 2-unit structures, at least one of the units must be occupied by a LMMI household. For multi-family rental structures of three or more units, a proportional share of the units must be occupied by LMMI households. (**NOTE** that this is different than the regular CDBG program requirements.) For example, if the total development cost is $1 m and NSP3 is providing $750,000, seventy-five percent (75%) of the units must be occupied by LMMI households.

NSP3 further requires that not less than twenty-five percent (25%) of the total NSP3 funds allocated to the State shall be utilized to provide permanent housing for households with incomes at or below fifty percent (50%) of the AMI.

I. Administrative and Project Delivery Costs

Units of local government and nonprofit entities acting as subrecipients are allowed to incorporate eligible NSP3 administrative costs. Eligible administrative costs are costs associated with administering the grant that are NOT directly related to the project itself. For example, a portion of the salary of a staff person that will oversee the NSP3-funded program (carry out budgeting, reporting, general oversight) is an administrative cost. Project specific costs such as appraisals, title searches, etc. are considered project costs.

The maximum amount that can be requested for administrative costs is ten percent (10%) of the final allocation amount. Applicants who choose to use a consultant must include the consultant fee, if any, in an amount not to exceed ten percent (10%) of the requested NSP3 allocation in the proposed development budget. Any amounts requested for project delivery costs may be in addition to the requested NSP3 allocation amount. The NSP3 allocation may not include both a consultant fee and a project delivery cost reimbursement.

All for-profit entities are considered developers and nonprofit entities acting as developers (carrying out acquisition and rehabilitation activities only as defined by HUD) are **NOT** allowed to receive funding for administrative costs but may include eligible project delivery costs and a reasonable developers' fee in the requested NSP3 allocation amount (as supported by a budget).

J. Funding Disbursement

Following ADFA Board approval of the NSP3 application, the following processes will apply:

1. Disbursement of NSP3 funds will occur only when <u>all</u> of the following conditions have been met:
    a. Required environmental review process has been satisfactorily completed.
    b. Project closing documents shall reflect a project completion date acceptable to ADFA and the recipient of the NSP3 funds. The NSP3 Agreement will outline the payment of the NSP3 funds, (e.g., how the funds will be disbursed, i.e., prorate share, etc.) The NSP3 Agreement must contain provisions for the timing of NSP3 fund disbursements.
    c. ADFA staff must complete all Disaster Recovery Grant Reporting (DRGR) system set up procedures.
    d. A pre-construction conference is held. The pre-construction conference must be conducted with the development team and an ADFA representative. ADFA must issue a Notice to Proceed before any construction may begin. To ensure that all NSP3 requirements have been met, no work shall begin until all documentation has been executed and ADFA issues a Notice to Proceed. **NO APPLICATIONS WILL BE ACCEPTED ON A PROJECT WHERE CONSTRUCTION IS UNDERWAY.**
2. Retainage will be released thirty (30) days after the final inspection is approved and **upon ADFA's receipt of all completion documentation.**

The following completion documentation will be required prior to ADFA's release of retainage:

- All DRGR set up procedures complete by ADFA staff

♦ Final completed Project Breakdown Pay Estimate Itemization (ADFA Form 2011)
♦ NSP3 Disbursement Certification Form (ADFA Form 2012)
♦ Owners Completion Certificate and Authorization of Payment to Contractors – (ADFA 10000)
♦ Project Completion Form (HUD Form 40097)
♦ Final Inspection Report by ADFA Inspector
♦ Plumbing Certification
♦ HVAC Certification
♦ Electrical Certification
♦ Certificate of occupancy (s) (for all buildings comprising the property)
♦ Certificate and Release of Liens (ADFA Form)
♦ Certification of Final Inspection (ADFA Form)
    ♦ Placed in Service Form (ADFA Form)
    ♦ Section 3 Compliance Report and Documentation Advertisement/Flyers/and any additional efforts to hire low and very low income county residents)
♦ Names, address, telephone number, and type of work for all subcontractors
♦ Release of Liens by Contractor
♦ Cost Certification
♦ Warranty Information for all Products
♦ Copy of Tenant Selection Criteria
♦ Affirmative Fair Housing Marketing Plan Documentation

♦ Proof of advertisement, flyers, proof of community contact letters being mailed, photo of project sign, waitlist and any other lease up marketing efforts)

♦ Proof of current Hazard/Liability Insurance naming ADFA as additional insured

♦ Management agreement between owner and agent

♦Match supporting documentation to reconcile with original application

♦Evidence of Operating Reserve requirements have been satisfied per application (Bank Statements)

♦ Completion of project information in the ADFA Housing Registry Database

♦ Any additional information and/or documentation which ADFA staff may deem necessary and appropriate to ensure compliance

If any NSP3-funded project has an available balance after development completion and release of retainage, ADFA will deobligate those funds and reallocate such balance of NSP3 funds to other eligible activities according to ADFA's adopted NSP3 allocation process. ADFA must ensure that all NSP3 funds are expended within three (3) years after the execution of the grant agreement (March 11, 2011) with HUD or by March 10, 2014.

K. Reimbursement for Pre-Award Costs

Per OMB Circular A-87, Attachment B, paragraph 31 and HUD NSP3 regulations, ADFA may incur pre-award costs as if Arkansas was a new grantee preparing to receive its first allocation of CDBG funds. The date of pre-award costs is the date of submission of the Consolidated Plan Amendment, which is March 1, 2011.

Therefore, predicated on that authority, ADFA will allow NSP3 funds to be used to reimburse eligible pre-award costs to entities approved for an award of NS3P funds, contingent upon the pre-award costs being included and documented in the applicant's proposal and adherence to all applicable requirements such as environmental review and the Uniform Relocation Act (URA). If the entity is NOT approved for an award of NSP3 funds, no reimbursement for pre-award costs will be allowed. Examples of allowable pre-award costs include, but are not limited to, appraisal fees, costs of a market study, costs of feasibility studies, and preparation of rehabilitation cost estimates.

Note: The most stringent requirements of any source of funds will apply to the project.

L. Combining NSP3 with Other Forms of Funding Assistance

NSP3funds should be used efficiently and encourage partnerships between public and private entities. In keeping with this mission, ADFA encourages the recipients to leverage their NSP3 allocation to the greatest extent possible with funds from private sources of funds and/or ADFA grants/loans, based upon demonstrated need.

Any proposal which omits firm financial commitments for the type of activity proposed will receive no points, will be considered as not financially feasible, and will not be considered for an award of NSP funds.

M. Performance Standards and Recapture of Funds

It is imperative that funds allocated to participants be used as quickly as possible and in the most efficient manner. Therefore, seventy-five percent (75%) of total NSP3 funds awarded must be disbursed on the development within one (1) year from the date of the notice to proceed to a development and all remaining funds within eighteen (18) months of notice to proceed. If these performance standards are not met, any unspent NSP3 funds may be recaptured and reallocated to fund other affordable housing developments.

Applicants approved for funding that do not complete the required number of units will be considered in default of their NSP3 Agreement. **ADFA will recapture allocated funds that have not been used in accordance with these performance standards and NSP3 regulatory commitment and disbursement requirements.** These funds will be placed back into the pool of funds that are available to fund other eligible NSP3 activities.

N. Requirements for Subrecipients

If a non-profit organization is awarded NSP3 funds for the acquisition and rehabilitation of residential property, the non-profit is considered a developer. However, in all other cases, a non-profit is considered a subrecipient. Subrecipients may be government entities or non-profits. Subrecipients are subject to comprehensive administrative and financial management requirements similar to ADFA, and ADFA is required to monitor the organizations for compliance.

Subrecipients that are government agencies are subject to the requirements set forth in OMB Circular A-87 "Cost Principles for State and Local Governments," certain provisions of 24 CFR Part 85 "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments," and A-133 "Audits of State and Local Governments and Nonprofit Organizations." Subrecipients that are nonprofit organizations are subject to OMB Circular A-122 "Cost Principles for Nonprofit Organizations," certain provisions of 24 CFR Part 84 "Grants and Agreements with Institutions of Higher Learning, Hospitals and Other Nonprofit Organizations," and A-133 "Audits of State and Local Governments and Nonprofit Organizations."

Subrecipients are required to comply with the requirements set forth in the subrecipient agreement signed by the ADFA and the subrecipient. As required by 24 CFR 570.501(b), ADFA will monitor subrecipients to ensure that NSP3 funds are being used in accordance with all program requirements and that subrecipients are adequately performing as required under subrecipient agreements and procurement contracts. If performance problems arise, ADFA will take appropriate actions as described in 24 CFR 570.910.

See also Section I. Administrative and Project Delivery Costs.

O. Acquisition of Properties Using NSP3 Funds

<u>Acquisition, Sales Contracts, and Obligations</u>

ADFA must have executed sales contracts for specific properties for funds to be considered obligated. Options or other non-binding instruments are not acceptable.

<u>Appraisals and Discount Requirements</u>

All properties acquired using NSP3 funds shall be appraised in conformity with the appraisal requirements of the Uniform Relocation Act (URA) at 49 CFR 24.103 by a licensed appraiser within **sixty (60) days** prior to an offer to purchase the property. Further guidance may be found at http://www.hud.gov/offices/cpd/communitydevelopment/programs/neighborhoodspg/docs/appraisal_guidance.doc.

NSP3 requires that properties acquired using program funding be purchased **at a discount of at least 1% from the current market appraised value of the home or residential property**. ADFA will require documentation to ensure the discount requirement is met including the address, appraised value, purchase offer amount and discount amount for each property. The discount value calculation may take into account the likely carrying costs of the mortgagee if it were to NOT sell the property to the applicant. Carrying costs may include: taxes, insurance, maintenance, marketing, overhead and interest. An appraisals must be submitted with the NSP3 application. Depending upon timing, the appraisal may subsequently have to be updated.

No acquisition of single-family dwellings will be allowed for property in excess of Federal Housing Administration (FHA) limits, currently set at $271,050.

Voluntary Transactions and Tenants

ALL NSP3-assisted property acquisitions must be voluntary acquisitions. Taking of property through eminent domain proceedings is **NOT** allowed. The Uniform Relocation Act requires that notices are provided to property owners even those considered to be voluntary transactions. The notices can be found at: http://www.hud.gov/offices/cpd/library/relocation/nsp/index.cfm.

URA and Section 104(d) and 5305(a)(11) of Title I of the Housing and Community Development Act of 1974, as amended, and the implementing regulations at 24 CFR Part 570.496(a) (the Barney Frank Amendment) govern the permanent displacement as well as temporary relocation of tenants in properties funded by NSP3. For more information, refer to http://www.hud.gov/offices/cpd/library/relocation/nsp/index.cfm. In addition, ARRA includes additional provisions protecting the rights of property owners and “bona fide” tenants. Refer to Section P below for more information.

Acquisition of a Property for Another Party

ADFA may not provide NSP3 funds to another party to finance an acquisition of tax foreclosed (or any other) properties from itself, other than to pay necessary and reasonable costs related to the appraisal and transfer of title. If NSP3 funds are used to pay such costs when the property owned by ADFA is conveyed to a subrecipient, homebuyer, developer, or other jurisdiction, the property is NSP3-assisted and subject to all program requirements, such as requirements for NSP3-eligible use and benefit to income-qualified persons.

Purchase of FHA-Foreclosed Properties

Per NSP3 regulations, HUD strongly urges every community to consider and include FHA-foreclosed properties in their NSP3 programs. The nature and location of many FHA-foreclosed properties make them compatible with the eligible uses of NSP3 funds, the geographic areas of greatest need, and the income eligibility thresholds and limits.

P. Tenant Rights and Protections

The following requirements apply to any foreclosed upon dwelling or residential real property that was acquired by the initial successor in interest pursuant to the foreclosure after February 17, 2009 and was occupied by a *bona fide* tenant at the time of foreclosure.

- The initial successor in interest in a foreclosed upon dwelling or residential real property shall provide a notice to vacate to any *bona fide* tenant at least 90 days before the effective date of such notice. The initial successor in interest shall assume such interest subject to the rights of any *bona fide* tenant, as of the date of such notice of foreclosure: (i) under any *bona fide* lease entered into before the notice of foreclosure to occupy the premises until the end of the remaining term of the lease, except that a successor in interest may terminate a lease effective on the date of sale of the unit to a purchaser who will occupy the unit as a primary residence, subject to the receipt by the tenant of the 90-day notice under this paragraph; or (ii) without a lease or with a lease terminable at will under State law, subject to the receipt by the tenant of the 90-day notice under this paragraph, except that nothing in this section shall affect the requirements for termination of any Federal- or State-subsidized tenancy or of any State or local law that provides longer time periods or other additional protections for tenants.
- In the case of any qualified foreclosed housing in which a recipient of assistance under Section 8 of the United States Housing Act of 1937 (42 U.S.C 1437f) (the “Section 8 Program”) resides at the time of foreclosure, the initial successor in interest shall be subject to the lease and to the housing assistance payments contract for the occupied unit.
- Vacating the property prior to sale shall not constitute good cause for termination of the tenancy unless the property is unmarketable while occupied or unless the owner or subsequent purchaser desires the unit for personal or family use.
- If a public housing agency is unable to make payments under the contract to the immediate successor in interest after foreclosure, due to (A) an action or inaction by the successor in interest, including the rejection of payments or the failure of the successor to maintain the unit in compliance with the Section 8 Program or (B) an inability to identify the successor, the agency may use funds that would have been used to pay the rental amount on behalf of the family—(1) to pay for utilities that are the responsibility of the owner under the lease or applicable law, after taking reasonable steps to notify the owner that it intends to make payments to a utility provider in lieu of payments to the owner, except prior notification shall not be required in any case in which the unit will be or has been rendered uninhabitable due to the termination or threat of termination of service, in which case the public housing agency shall notify the owner within a reasonable time after making such payment; or (2) for the family’s reasonable moving costs, including security deposit costs.

A lease or tenancy shall be considered *bona fide* only if: (i) the mortgagor under the contract is not the tenant; (ii) the lease or tenancy was the result of an arms length transaction; and (iii) the lease or tenancy requires the receipt of rent that is not substantially less than fair market rent for the property.

ADFA will maintain documentation of its efforts to ensure that the initial successor in interest in a foreclosed upon dwelling or residential real property has complied with the requirements under section K.2.a. and K.2.b. If ADFA determines that the initial successor in interest in such property failed to comply with such requirements, it may not use NSP3 funds to finance the acquisition of such property unless it assumes the obligations of the initial successor in interest specified in section K.2.a. and K.2.b. If ADFA elects to assume such obligations, it must provide the relocation assistance required pursuant to 24 CFR 570.606 to tenants displaced as a result of an activity assisted with NSP3 funds and maintain records in sufficient detail to demonstrate compliance with the provisions of that section.

The recipient of any grant or loan made from NSP3 funds may not refuse to lease a dwelling unit in housing with such loan or grant to a participant under the Section 8 Program because of the status of the prospective tenant as such a participant.

This section shall not preempt any Federal, State or local law that provides more protections for tenants.

Q. Energy Efficiency

To the extent feasible, ADFA will strongly encourage grantees to incorporate modern, green building, and energy-efficiency improvements in all NSP3 activities to provide for long-term affordability and increased sustainability and attractiveness of housing and neighborhoods.

http://hudnsphelp.info/media/resources/GreenHousingDevelopmentGuide.pdf

ADFA requires new construction projects (single-family and multifamily) with ADFA construction financing to qualify as an Energy Star rated unit and be 30% more efficient than code with a HERS index of 70 or less (Energy Star minimum score is 85).

R. Other Federal Requirements

NSP3 awardees and funded projects must adhere to all applicable other Federal requirements as outlined in 24 CFR part 570, HERA, ARRA, and NSP3 guidance from HUD. Key requirements are summarized below.

Equal Opportunity and Fair Housing

The state shall not exclude any organization or individual from participation under any program funded in whole or in part by NSP3 funds on the grounds of age, disability, race, creed, color, national origin, familial status, religion, or sex.

The following federal requirements as set forth in 24 CFR 5.105(a), Nondiscrimination and Equal Opportunity, are applicable to NSP3 projects:

Fair Housing Act	24 CFR 100
Executive Order 11063, as amended (Equal Opportunity in Housing)	24 CFR 107
Title VI of the Civil Rights Act of 1964 (Nondiscrimination in Federal Programs)	24 CFR 1
Age Discrimination Act of 1975	24 CFR 146
Section 504 of the Rehabilitation Act of 1973	24 CFR 8
Executive Order 11246, as amended (Equal Employment Opportunity Programs)	41 CFR 60
Section 3 of the Housing and Urban Development Act of 1968[1]	24 CFR 135
Executive Order 11625, as amended (Minority Business Enterprises)	
Executive Order 12432, as amended (Minority Business Enterprises)	
Executive Order 12138, as amended (Women's Business Enterprise)[2]	

In addition to the above requirements, all NSP3 participants must ensure that their Equal Opportunity and Fair Housing policies related to activities funded by NSP3 are consistent with the current Consolidated Plan adopted by their jurisdiction or the State Consolidated Plan.

Affirmative Marketing

Any entity applying for NSP3 funds must adopt affirmative marketing procedures and requirements for all NSP3-assisted housing and submit the affirmative marketing plan with the NSP3 application. The affirmative marketing plan and requirements for NSP3-assisted housing must be approved by ADFA prior to any NSP3 funds being committed to a development. Affirmative marketing requirements and procedures must include ALL of the following:

- Methods for informing the public, owners, and potential tenants about fair housing laws and the policies of the local program
- A description of what owners and/or the program administrator will do to affirmatively market housing assisted with NSP3 funds
- A description of what owners and/or the program administrator (e.g.., community development director) will do to inform persons not likely to apply for housing without special outreach

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[1] Section 3 requires that the employment and other economic opportunities generated by federal financial assistance for housing and community development programs shall, to the greatest extent feasible, be directed toward low and very low income persons, particularly those who are recipients of government assistance for housing.

[2] Executive Orders 11625, 12432, and 12138 require that participating jurisdictions and local programs must prescribe procedures acceptable to HUD for a minority outreach program to ensure the inclusion, to the greatest extent possible, of minorities and women entities owned by minorities and women in all contracts. Local programs must also develop acceptable policies and procedures if their application is approved by ADFA.

- Maintenance of records to document actions taken to affirmatively market NSP3-assisted units and to assess marketing effectiveness
- A description of how efforts will be assessed and what corrective actions will be taken when requirements are not met.

Environmental Review

In implementing NSP3, the environmental effects of each activity must be assessed in accordance with the provisions of the National Environment Policy Act of 1969 and HUD's regulations at 24 CFR Part 58.

ADFA, as the NSP3 grantee, and the units of local government funded by ADFA will be responsible for carrying out environmental reviews for approved projects/programs. ADFA will approve the release of funds (ROF) for local governments and must request the release of funds (RROF) from HUD for any developments carried out by other types of entities. NSP3 funds are approved as a conditional commitment until the environmental review process has been completed, with the option to proceed, modify or cancel the project based upon the results of the review. ADFA reserves the right to require a Phase I Environmental Study as part of the environmental review process.

Applicants/awardees of NSP3 funds may NOT execute contracts for purchase of properties that may be funded with NSP3 until receiving written authorization from ADFA to do so.

Flood Plains/Wetlands

NSP3 funds may generally not be invested in housing located in an area identified by the Federal Emergency Management Agency (FEMA) as having special flood hazards. ADFA discourages developments located in special flood hazard areas but, in some instances and with written permission from ADFA, houses or residential property located in a flood plain may be assisted. It is the responsibility of the applicant to evaluate any remedies to remove any properties from the flood plain and ensure the feasibility of the proposed plan. ADFA is willing to consider the proposed remedy and must approve the proposal in writing prior to approval of any NSP3 allocation. The community must be currently participating in the National Flood Insurance Program, and flood insurance must be obtained and maintained on the NSP3-assisted property for the full period of affordability.

Lead-Based Paint Requirements

The Lead-Based Paint Regulations described in 24 CFR Part 35 require that lead hazard evaluation and reduction activities be carried out for all developments constructed before 1978 and receiving NSP3 assistance. Applications for rehabilitation funds for existing buildings constructed prior to 1978 must include a lead hazard evaluation, by appropriate lead-certified personnel. The application must also include detailed lead hazard reduction plan, in accordance with the regulations, and separately identify within the rehabilitation budget, the costs associated with reduction of lead hazards in accordance with the regulation and guidelines. All NSP3 fund allocations will be contingent upon the applicant agreeing to complete lead hazard reduction, evidenced by a clearance report performed by appropriate lead-certified personnel. In a development where NSP3 funds will be used on only a portion of the units, the lead-based paint requirements apply to ALL units and common areas in the development.

Labor Standards

Davis-Bacon wage compliance and other federal laws and regulations pertaining to labor standards apply to all construction and rehabilitation contracts that are financed in whole or in part with NSP3 funds for residential property consisting of eight (8) or more NSP3-assisted units.

Davis-Bacon and related laws include the following:

- Davis-Bacon and Related Acts (40 USC 276a-276a-7)
- Contract Work Hours and Safety Standards Act (40 USC 327-333)
- Copeland (Anti-Kickback) Act (18 USC 874; 40 USC 276c)
- Fair Labor Standards Act of 1938, as amended (29 USC 201, et seq.)

The construction bids and contract for any NSP3-assisted activity **must** contain the applicable wage provisions and labor standards. Davis-Bacon does not apply to projects using solely volunteer labor or to sweat equity projects. ADFA will monitor all developments subject to Davis-Bacon requirements to ensure compliance with all applicable regulations.

Debarment and Suspension

ADFA will require participants in lower-tier transactions covered by 24 CFR 24 to certify that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from any entity from a federally funded transaction. Any participant that remains on a debarred or suspended condition shall be prohibited from participation in the ADFA NSP3 as long as they are classified in this manner.

Note: ADFA reserves the right to require criminal background checks for all program participants as part of the application process. Please refer to ADFA's agency policy and requirements for information regarding this item (See ADFA's 2011 QAP and/or 2010 HOME Policy Manual).

Relocation

NSP3 funds are intended ONLY for use in purchasing/improving properties that have been abandoned and foreclosed. As such, most properties are expected to be vacant at the time of appraisal and offer to acquire. Should there be residents in any foreclosed property considered for NSP3assistance, potential awardees must follow the residential anti-displacement and relocation plans in effect and outlined in the State's approved Consolidated Plan and all applicable Uniform Relocation Assistance and Real Property Acquisition Act (URA) of 1970 provisions. Applicable regulations can be found at 49 CFR Part 24.

Audit

ADFA requires that local government and non-profit recipients expending more than $500,000 in Federal awards in a given fiscal year have an audit conducted in accordance with Generally Accepted Accounting Principals (GAAP) and the Single Audit Act Amendments of 1996 (31 U.S.C. 7501-7507) and revised OMB Circular A-133, "Audits of States, Local Governments, and Non-Profit Organizations." An audit of NSP3 funds must be submitted to ADFA annually on or before June 30 each year.

Section 3

Section 3 of the Urban Development Act of 1968 requires applicants receiving $200,000 or more in HOME Program Funds, to the greatest extent feasible, provide opportunities for training and employment to low-income persons residing in the program service area. Also, to the greatest extent feasible, contracts for work (all types) to be performed in connection with HOME will be awarded to business concerns that are located in or owned by persons residing in the program service area. All contracts must include Section 3 required clause. A detailed Section 3 marketing plan with methods of informing the public, owners and potential employers of the job opportunities.

Vicinity Hiring

The applicant shall, to the maximum extent feasible, provide for the hiring of employees who reside in the vicinity of the projects or contract with small businesses that are owned and operated by persons residing in the vicinity of such projects**.**

NOTE: Does not replace the responsibilities of Section 3 requirements.

S. Procurement

Local governments and subrecipient entities are required to adhere to all applicable procurement requirements in the selection and award of contracts for goods and services. Therefore, all solicitation of bids for goods and services to be paid with NSP3 funds must be conducted openly and competitively in accordance with Arkansas State Procurement guidelines, as applicable.

Developers are not subject to procurement requirements, but costs must be considered reasonable to be eligible under the program.

T. Contractor Requirements

All general contractors working on all NSP3-funded developments must have an active license issued by the Arkansas Contractor's Licensing Board (the "State Licensing Board") as applicable and meet all requirements of contractors in the State of Arkansas, including securing Builder's Risk insurance. Contractors may not "share" a license. That is, ADFA will not allow one contractor to work from another contractor's license.

All ADFA NSP3-funded projects must have a general contractor that is properly licensed by the Arkansas State Contractor's Licensing Board. Any questions regarding licensing issues and a list of licensed contractors may be directed to the State Licensing Board at the following address:

Arkansas Contractor's Licensing Board
4100 Richards Road
North Little Rock, AR 72117
(501)372-4661

Any contractor or subcontractor who has been debarred by any entity or had a contractor license suspended by any entity within the previous twelve (12) months will be prohibited from participating in the NSP3. All general contractors working on all NSP3-funded developments must obtain one of the following: (1) a payment and performance bond; or (2) an Irrevocable Letter of Credit in the amount of the construction contract.

Note: Construction contracts for rehabilitation projects $25,000 or under will not be required to obtain a payment and performance bond or an irrevocable letter of credit.

U. Inspections

Inspections are required with all activities that are funded through the NSP3. ADFA currently has inspectors that will be available as needed. ADFA staff will coordinate with recipients of NSP3 funds and inspectors to schedule all inspections. **Applicants must notify ADFA a minimum of 48 hours in advance to schedule inspections.**

An inspection will be preformed monthly and at each of the stages below:

Stage 1	**Stage 2**	**Stage 3**	**Stage 4**
Excavation	Plumbing top-out	Flooring systems	Final Inspection
Metals	Electrical rough-in	Painting	
Termite treatment	Framing	Doors	
Rough-in plumbing	Roof	Cabinets	
Earth work	Interior wall systems	HVAC	
Water proofing (vapor barrier)	Exterior wall systems	Electrical top-out	
Footing	Ventilation	Special construction (elevators, etc.)	
Slab	Insulation	Appliances	

Inspections may be scheduled more frequently, as warranted. The ADFA inspector must attend any pre-construction meetings for NSP3-funded developments. When a project is ready for a draw on funds, the property must be inspected and/or approved to verify that the work has been satisfactorily completed. **ADFA will only make payments on work that has been satisfactorily completed, inspected and approved by an ADFA inspector.**

Applicants may email, or mail their payment request, with all of the required documentation, to ADFA using the following contact information:

Arkansas Development Finance Authority
Attn: NSP3 Program Department
P.O. Box 8023
Little Rock, AR 72203-8023

If awarded, a project manager will be assigned, at which time, an email address will be provided.

V. Change Orders

ADFA recognizes that changes in a development occur from time to time. Any change orders must be justified on the basis of unanticipated occurrences or findings not available at the time of the execution of the original contract. It is important that NSP3 participants submit change orders on the proper ADFA form. All change orders **must be** approved by the ADFA staff prior to initiating work. No payment of NSP3 funds will be made on change orders that have not been approved by ADFA. Any changes to the original amounts of NSP3 assistance must be reflected by an Amended and Restated Mortgage and Promissory Note.

W. Construction Contingency

ADFA allows for the development budget to include a construction contingency equal to or less than ten percent (10%) of the NSP3 funds requested. A rehabilitation, reconstruction, or new construction activity, including contingencies, may not exceed the ADFA established per unit limits for the NSP3.

X. Closing of Transactions

ADFA will select and/or approve a closing entity to provide closing services for all NSP3 transactions using ADFA-approved documents. The services will be available and required in the county where the development is located. ADFA staff will provide closing instructions for all NSP3-funded transactions to the closing entity. ADFA will be responsible for payment of costs associated with closing the NSP3 portion of the transaction.

Y. Reporting Requirements

ADFA is required to submit quarterly performance reports to HUD no later than thirty (30) days following the end of each quarter, beginning 30 days after the completion of the first full calendar quarter after grant award (i.e., August 1, 2011) and continuing until all funds are expended and the program is closed out. Accordingly, all NSP3 awardees will be required to submit performance information to ADFA by established deadlines conducive for ADFA to meet its reporting requirements.

Performance information will include, but not be limited to, the following:

- Project name
- Project activity
- Project location
- NSP3 Eligible use
- CDBG national objective
- Budgeted funds
- Expended funds
- Funding source
- Total amount of any non-NSP3 funds
- Numbers of properties and housing units assisted
- Beginning and ending dates of activities
- Numbers of low, moderate, and middle-income persons or households benefiting
- Demographic data for households benefiting

To collect these data elements and to meet its reporting requirements, ADFA will use HUD's online DRGR system to report on its NSP3 funds to HUD. When it submits the report to HUD, ADFA will post a copy of the NSP3 DRGR report on a website for the public to review.

Reporting requirements are subject to change and additional specificity based on further guidance from HUD.

Z. Program Income

All entities, government or private (as defined at 24 CFR 570.500(c)), that receive program income (as defined at 24 CFR 570.500(a)) directly generated by activities carried out with NSP3 funds must **immediately remit any and all program income from NSP3-assisted activities directly to ADFA.** ADFA will disburse and use program income prior to requesting additional cash withdrawals from the U.S. Treasury.

AA. Monitoring

During the period of affordability, ADFA will perform on-site compliance and monitoring inspections of all single-family and multi-family developments utilizing NSP3 funds to determine compliance with the applicable regulations and requirements outlined in this manual and NSP3 regulations.

IV. The NSP3 Rental Housing Program

Recipients utilizing funds in the NSP3 Rental Housing Program must closely adhere to all NSP3 regulations, as well as to ADFA's program-specific guidelines and adopted policies. Notwithstanding these requirements, program participants may structure their development and application for NSP3 Program funds to meet the specific rental needs of their community.

A. Eligible Applicants

ADFA will accept applications for projects up to the **4:30 p.m. October 21, 2011** application deadline. Multiple NSP3 applications may be submitted for funding. ADFA will determine at its sole and absolute discretion if the applicant has the necessary capacity to complete any additional NSP3 applications submitted. Additional NSP3 applications submitted by eligible applicants will be approved only if the applicant exhibits the capacity to successfully complete all approved projects. ADFA will accept applications for rentals at a minimum of **five (5) units**, from entitlement communities, other units of local government, nonprofit organizations, or for-profit entities.

Eligible applicants may receive technical assistance by attending an information/training session prior to submitting an application. Sessions will address NSP3 Program and ADFA guidelines as well as application procedures. Applicant eligibility will be based on the designated responsible entity submitting the application. An eligible designated responsible entity is the entity responsible for project development, but may include all of its related affiliated entities.

B. Amount of NSP3 Funding Per Applicant

Each eligible applicant must request at least one hundred thousand dollars ($100,000). The maximum amount that can be requested for a developer's fee is ten percent (10%) of the final allocation amount. The allocation is generally meant to be used as gap financing and is not intended to fund an entire development.

C. Eligible Activities and Projects

ADFA will accept applications in the NSP3 Rental Housing Program in the following eligible activity categories:

1. **Acquisition** – Acquisition of vacant foreclosed rental properties for the purposes of providing housing to NSP3 income eligible tenants.
2. **Rehabilitation** – Rehabilitation of abandoned and foreclosed rental properties for the purposes of providing housing to NSP3 income eligible tenants. This activity would be combined with acquisition of abandoned and foreclosed properties.
3. **Reconstruction** – Reconstruction of vacant and foreclosed structures for the purposes of providing rental housing to NSP3 income eligible tenants. This activity would be combined with acquisition of abandoned and foreclosed properties.
4. **New Construction –** New construction of rental properties for the purposes of providing housing to NSP3 income-eligible tenants. The property upon which the structures are constructed must be foreclosed, as defined by NSP3.

Each application must include a minimum of five (5) units.

All projects must aim to re-inhabit vacant, foreclosed properties through their acquisition, rehabilitation, reconstruction, new construction, or some combination thereof. Eligible projects include multiple buildings on a single site as well as single or multiple units on scattered sites. Units may be on scattered sites but each site must be within an area of greatest need, as defined by HUD, and the same jurisdiction.

ADFA will require all proposals to include no less than 25 percent of NSP3 funding requested to be designated for households at or below 50 percent of area median income. NSP3 funds may be used for a mixed-income development provided that a pro rata of NSP3-eligible units are occupied by households meeting the income limits of the NSP3. Common area costs must be prorated based upon the number of NSP3-assisted units and non-NSP3-assisted units.

A building that is designed, in part, for other than residential housing may qualify as affordable housing under the NSP3 as long as NSP3 funds are used for the residential portion and those units meet the rent and income limitations of the NSP3 (see F. Rent Limits and Project Affordability for more information.)

D. Eligible Costs

NSP3 Program funds may be used for certain development costs as dictated by 24 CFR Part 570 and outlined below:

1. **Hard Costs** – Eligible hard costs are the actual cost of constructing or rehabilitating vacant, foreclosed housing. These costs include the following:
    a. Construction, rehabilitation, or reconstruction of affordable housing units
    b. Site improvements (including utility connection costs, but <u>not</u> the costs to provide utilities to the site)
    c. Demolition (must be done in conjunction with a specific affordable housing project)
    d. Acquisition
2. **Soft Costs** –Eligible soft costs must be “usual, customary, reasonable, and necessary” and may include the following:
    a. Finance related costs, i.e., credit reports, title reports and updates, appraisal fees, surveys, origination fees and discount points, and construction interest
    b. Current market study (not more than six (6) months old)
    c. Project audit costs
    d. Reasonable fees for professional services (architectural, engineering, and other services provided for a specific project; otherwise, the professional service costs may be considered to be administrative costs)
    e. Reasonable consultation fees (not associated with organizational startup) **DEVELOPERS CANNOT HIRE THEMSELVES AS CONSULTANTS ON ANY NSP3-FUNDED PROJECT OTHER THAN ON A THIRD-PARTY BASIS.**
3. **Relocation Costs –** The cost of permanent or temporary relocation of tenants, as required by the URA.

Note: While ADFA does not have a predetermined, specific limit on cost per square foot, the developer should be aware that the per unit cost per square foot will be closely scrutinized for reasonableness, and an application for funding will be denied if costs are deemed unreasonable.

4. **Project Delivery Costs** – Any nonprofit entity or local government receiving a NSP3 allocation may include project delivery costs (in an amount not to exceed 10% of the final NSP3 allocation) in the development budget. Project delivery costs are eligible only for costs directly associated with the NSP3-funded development. A certification of costs must be submitted with all requests for project delivery costs. **Participants must submit an itemized budget for project delivery costs as part of the initial application.**

Proper documentation is essential for the payment of project delivery cost fund requests. Project delivery costs must be supported by source documentation **maintained on file by the recipient** of NSP3 funds. Requests for payment of project delivery costs must be verified by the Certification of Costs (signed by the recipient) and not by the supporting documentation maintained by the recipient. Supporting documentation will be reviewed and verified by ADFA staff performing compliance and monitoring reviews.

Acceptable supportive documentation includes:

- A copy of a detailed bill highlighting the costs to be reimbursed to the NSP3 participant. The detailed bill should, at a minimum, include vendor identification, a description of the services received, the quantity (hours, units, etc.), and the price for services received. The detailed bill must be substantiated by a cancelled check, a copy of the bank statement or other proof of payment
- No handwritten invoices will be accepted.
- All invoices must have an authorized signature of the NSP3 participant's Executive Director, or his or her designee, approving the payment and verifying that the services were received and satisfactorily performed, the month the cost is being paid, dated, and cancelled to prevent the invoice from being paid twice.
- ADFA will reimburse salaries, on a pro rata basis, which are "reasonable and customary" for support personnel (e.g., clerical, temporary employee, etc.) of the NSP3 participant directly providing project delivery costs to the affordable housing being assisted at a rate commensurate with their regular hourly wages.
- A copy of any contracts for professional services, (e.g., consultants, architects, contractors, etc.), if applicable, must be provided in the initial application outlining the services to be rendered, the cost of the proposed services, and the proposed payment schedule or terms..
- Satisfactory documentation of fringe benefits being paid. Examples of fringe benefits include the following:
    - Vacation/Sick/Holiday/Compensatory Time
    - Pensions
    - Veteran's Benefits
    - Group Insurance
    - Life Insurance/Long-term Disability
    - Accidental Death and Dismemberment Insurance
    - Profit Sharing Plan

- Association/Union Dues

The use of prorated payment percentages is acceptable and must be outlined in the initial application as well as each billing statement submitted for reimbursement. The applicant must provide the sources of other funds used to pay project delivery costs, if any.

E. Forms of Financial Assistance

ADFA caps the maximum per unit cost for rental projects at $132,000 per unit or $158,400 per unit for properties listed on the National Register of Historic Places.

NSP3 allocations for rental housing activities will be in the form of a loan at **0% interest amortized over the period** of affordability. The minimum affordability period may be extended at the owner's election.

F. Rent Limits and Project Affordability

All NSP3 Program funds must benefit households with incomes no greater than 120% of the area median income, adjusted for family size. Rents in all NSP3-assisted units must be set at "affordable rents," which are defined as follows:

- Low HOME Rent Limits: Tenant households with incomes < 50% of the AMI
- Tenant households with incomes between 51 and 120% of AMI - FMR

NSP3- assisted units must meet rent and occupancy restriction requirements. Gross rents, including utility costs, will be restricted such that households shall pay the lesser of:

1) Thirty (30%) percent of their gross income for rent, including utilities;
2) Applicable fair market rent; or
3) HOME Program rents for persons at or below Fifty (50%) of AMI.

These rent limits and area median incomes are recalculated on an annual basis by HUD.

The percentage of total units that is the same as the percentage that the NSP3 Funds request is to the total development costs must be restricted to households earning no more than 120% of Area Median income.

All NSP3-assisted projects must remain affordable to and occupied by LMMI households within the above listed rent limits for a period of time that varies in accordance with the level of NSP3 assistance. The table below provides the minimum period over which NSP3-assisted units must remain affordable.

NSP3 Assistance Per Unit	Minimum Affordability Period
Under $15,000	5 Years
$15,000 - $40,000	10 Years
Over $40,000	15 Years
New Construction or Acquisition of Newly Constructed Rental Housing	20 Years

Rent, occupancy, and affordability requirements will be enforced with AFDA-approved covenants, mortgages, or deed restrictions running with the property. Specifically, rental property owners/managers will be required to document that the required percentage of units are occupied by LMMI households over the period of affordability. Income must be determined at a minimum, when a NSP3-funded unit is occupied by a new tenant household (i.e., at unit turnover).

Where NSP3 Program funds are used in conjunction with other Federal financing programs, the more stringent project, occupancy regulations and affordability period will apply.

G. Universal Design Standards

The following building design criteria must be included in all construction for all NSP3-funded rental projects, in accordance with the Arkansas Department of Human Services' *Arkansas Usability Standards in Housing: Guidance Manual for Constructing Inclusive Functional Dwellings* (AUSH):

1. Seven percent (7%) of all residential rental units within the development must comply with the Level 5, "All-Inclusive" usability criteria as set forth in the AUSH. The AUSH is available on the internet at the following website address: www.studioaid.org. Under the "Design" link, click on "standards."
2. Each unit that is required to meet the Level 5, "All-Inclusive" usability criteria set forth in the AUSH must have at least one bathroom with an "accessible roll-in" shower facility with minimum dimensions of 60"x34," or 42" x 42" if a corner shower facility.
3. All ground level residential rental units in any building and all residential units with elevator access in any building in the development must comply with the Level I, "Visitable" usability criteria as set forth in the AUSH.
4. All exterior and interior doors intended for passage must provide for a minimum clear opening of 34".
5. All residential units in the development will have "closed-fist" operability throughout the unit (e.g., single handle door levers vs door knobs, push stick lighting and environmental controls, cabinet doors can be opened with a closed first, single handle faucets in bathrooms and kitchen).
6. All environmental controls must provide visual and tactile cues. For lighting, a "rocker" type switch is sufficient. For thermostats, a programmable and digital with raised buttons is required.
7. All primary entries, not in a breezeway, must have a minimum roof covering of 5'x 5'.
8. All primary entries must have entry pad measuring at least 5'x 5'.
9. All sidewalks must be at least 5' wide.

The NSP3 assisted development must comply with the remainder of ADFA's minimum design standards. Preliminary plans and specifications must be submitted with the application in sufficient detail to ensure such compliance.

H. Methods of Repayment

The standard loan terms and conditions for repayment of Rental Housing Program loans are to be evidenced by fully executed promissory notes. Promissory notes will be payable at a **zero percent (0%) interest rate** for a term coinciding with the NSP3 affordability period per the affordability chart or a longer term as elected by the applicant.. Monthly or annual payments will become due and payable not later than one (1) year from the anticipated placed in service date shown on Schedule of Activities, included as Attachment B of the NSP3 Agreement.

I. Leveraging Requirements for Rental Development

Applications will receive additional points for leveraging NSP3 funds with private funding sources and/or non-ADFA grant/loans.

VI. Glossary

Affordability: As used in this guide, affordability refers to the requirements of the NSP3 that relate to the cost of housing both at initial occupancy and over established timeframes, as prescribed in the HERA and HUD requirements. Affordability requirements vary depending on the nature of the NSP3-assisted activity (i.e., homeownership or rental housing).

Affordable Rents: Rents that are at or below the Fair Market Rent (FMR) levels as determined by the U.S. Department of Housing and Urban Development (HUD) per county. (Note: Fair Market Rents include utilities, therefore if a tenant is paying their own utilities, the Utility Allowance published by the local Public Housing Authority (PHA), must be deducted from the maximum FMR). For purposes of the NSP3, "affordable rents" shall be in accordance with the HOME Program Rents and FMRs as delineated in the HOME Investment Partnerships Program. The "affordable rents" are as follows:

- Beneficiaries whose total household income is = 50% of AMI – Low HOME Rent
- Beneficiaries whose total household income is 51% - 60% of AMI – – FMR

Annual (Gross) Income: NSP3 allows the use of one of the three definitions of income: Section 8 annual income (as defined under 24 CFR Part 5); annual income as reported on the U.S. Census Long Form; and adjusted gross income as defined for the purposes of reporting on IRS Form 1040. For the purposes of NSP3, ADFA is using the Section 8 annual income definition (as defined under 24 CFR Part 5) to document income eligibility.

Commitment: The written, legally binding agreement between the ADFA and the project owner providing NSP3 funds to a project.

Consolidated Plan: A plan prepared in accordance with the requirements set forth in 24 CFR Part 91, which describes community needs, resources, priorities and proposed activities to be undertaken under certain HUD programs, including the NSP3.

Developer: For profit entities assembling, financing, managing and possibly owning NSP3 deals. For nonprofits, only those carrying out acquisition and rehabilitation are considered developers.

Development: A site or an entire building or two (2) or more buildings, together with the site or sites on which the building are located, that are under common ownership, management and financing and are to be assisted with NSP3 funds-under commitment by the owner-as a single undertaking.

Development Fees: Compensation to the developer for developing the property, includes overhead and profit, consult/processing agent fees, project administration, the value of personal guarantees and a portion of any reserves determined by the housing credit agency to be in excess of industry norms.

Equity: The value of a property less the amount of outstanding debt on it.

Financing Plan: The proposed financing from all sources for a project.

Foreclosed Property: For purposes of implementing the NSP3, a foreclosed property is defined as a property that, under state or local law, has a completed mortgage or tax foreclosure process. A foreclosure is not considered to be complete until after the property title has been transferred from the former owner under a foreclosure proceeding or transfer in lieu of foreclosure.

General Partner: A partner who is liable and responsible for completing a project as proposed, managing the partnership and guaranteeing funding required to complete the project. A general partner oversees construction, leasing and property management; maintains the books and records of the partnership; and submits periodic reports to the limited partners on the project's financial status.

General Partnership: A form of ownership in which all partners participate materially in the partnership's operations and share liability.

Limited Partner: A passive investor in a limited partnership who, in exchange for contributing equity to the project, receives a pro rata share of cash flow and tax benefits and the right to approve the sale or refinancing of the property

Limited Partnership: An ownership vehicle comprising limited and general partners that allows for central management but has no tax liability, instead passing tax benefits through to its limited and general partners.

Low-Moderate-Middle Income (LMMI) National Objective: For the purposes of ADFA's implementation of NSP3, an activity meets HERA's Low-Moderate-Middle Income (LMMI) National Objective if the assisted activity provides or improves permanent residential structures that will be occupied by a household whose income is at or below 120 percent (120%) of area median income (abbreviated)

Managing General Partner: The general partner responsible for the day-to-day management of a limited or general partnership.

Middle-Income Family/Person: Family or person whose annual (gross) income does not exceed one hundred and twenty percent (120%) of the median income for the area (adjusted for family size). HUD may establish, on an exception basis, income ceilings higher or lower than one hundred and twenty percent (120%) of the median income for an area.

New Construction: Construction of a new housing unit where one did not exist. In addition, any project that includes the creation of additional dwelling units outside the existing walls of a structure is also considered new construction.

NSP3-Assisted Unit: Units within a NSP3 project where NSP3 funds are used and rent and occupancy restrictions apply.

Partnership Agreement: A legal document that specifies the rights and responsibilities of the general and limited partners and governs the ongoing relationship between these parties.

Project: A site or an entire building or two (2) or more buildings, together with the site or sites on which the building are located, that are under common ownership management and financing and are to be assisted with NSP3 funds – under a commitment by the owner – as a single undertaking.

Reasonable Developer's Fee: For purposes of implementing NSP3, a reasonable developer's fee is defined as a fee earned for development of single or multi-family affordable housing which does not exceed ten percent (10%) of total development costs. An NSP3 proposal may include a developer's fee OR an amount for administration, but not both. The amount of such developer's fee or administration should be clearly indicated in the proposal and included in the total amount of NSP3 funds requested.

Recapture: Repayment of losses of NSP3 funds due to lack of performance with applicable performance standards as defined under General Requirements in Section O of this manual.

Restrictive Covenant: A limitation placed on a property, which is recorded and attached to the deed, thereby passing the limitation on to subsequent owners.

Soft Costs: Development costs exclusive of the cost of acquisition, site improvements, construction and contingencies.

State Recipient: Any unit of local government designated by a state to receive NSP3 funds. The state is responsible for ensuring that NSP3 funds allocated to state recipients are used in accordance with the NSP3 regulations and other applicable laws.

Subrecipient: Public agencies and nonprofit organizations that assist the recipient to undertake one or more activities on behalf of the grantee. Does not include for-profit entities or nonprofits carrying out acquisition and rehabilitation projects only.

Substantial Rehabilitation: The cost of a rehabilitation project that costs more than $25,000.

Syndicates: Individuals or firms who arrange for the sale of ownership shares in a project to raise equity from investors.

Targeting: Requirements of the NSP3 relating to the income or other characteristics of households that may occupy NSP3-assisted units.

Total Development Cost ("TDC"): The sum of all costs for site acquisition, relocation, demolition, construction and equipment, interest and carrying charges.

Vacant Properties: Unoccupied structures or vacant land that was once developed.

Very Low-Income Family: Family whose annual (gross) income does not exceed fifty percent (50%) of the median income for the area (adjusted for family size). HUD may establish income ceilings higher or lower than fifty percent (50%) of median income for an area on an exception basis.

VII. Appendix I

SELECTION CRITERIA

NEED:

25 Points Available

In determining areas of greatest need ADFA will rely upon data provided by:

1) Local Initiatives Support Corporation ("LISC") published at:

   http://www.foreclosure-response.org/maps_and_data/lisc_data.html#wkbk ; and
2) Department of Housing and Urban Development ("HUD") published at:
   (http://www.huduser.org/portal/datasets/NSP.html

Scoring will be according to the following two tables:

I. <u>County Level</u>

ADFA has designated the areas of greatest needs based upon the HUD needs score. ADFA will provide priority points, as indicated below, to be those 28 counties in Arkansas identified by HUD as areas of greatest need, i.e., having at least one census tract with a needs score of 13 or above. ("Priority Counties"). **Threshold minimum needs score is 12.**

Priority A Counties: Arkansas Counties of a HUD needs score of 17 or greater: **Lincoln, Crittenden, Desha, Jefferson, Phillips**	**15 Points**
Priority B Counties: Arkansas Counties of a HUD needs score of 14 or greater but less than 17 or greater: **Arkansas, Ashley, Benton, Calhoun, Chicot, Cleveland, Dallas, Drew, Franklin, Madison, Mississippi, Newton, Pulaski, St. Francis, Searcy, Union**	**10 Points**
Priority C Counties: Arkansas Counties of a HUD needs score of 13: **Bradley, Hot Springs, Marion, Poinsett, Polk, Scott, Union**	**5 points**

II. <u>Zip Code Level</u>

The *LISC Needs Scores* for areas in Arkansas range from 0 to 100, with a median score of 11.4. ADFA has determined a minimum *LISC Needs Score* of 3.0 to indicate the areas of greatest need. Using the *LISC Needs Score* by U.S. Postal Service zip code area, ADFA has established the following as areas of greatest need ("Priority Areas"), translated into priority points:

Level 1 - U.S.P.S. zip code areas with *LISC Needs Score* = 19.0	15 priority points
Level 2 - U.S.P.S. zip code areas with *LISC Needs Score* 9.0 but = 18.9	10 priority points
Level 3 - U.S.P.S. zip code areas with *LISC Needs Score* = 3.0 but = 8.9	5 priority points

LISC Needs Scores		
County	City	Score
Pulaski	LITTLE ROCK	**100.0**
Crittenden	WEST MEMPHIS	**74.0**
Jefferson	PINE BLUFF	**52.6**
Mississippi	BLYTHEVILLE	**39.9**
Washington	SPRINGDALE	**38.9**
Benton	ROGERS	**25.2**
Phillips	WEST HELENA	**21.6**
Crawford	VAN BUREN	**20.3**
Union	EL DORADO	**19.9**
Hot Spring	MALVERN	**19.7**
Craighead	JONESBORO	**16.9**
Garland	HOT SPRINGS NATIONAL PARK	**16.4**
Ouachita	CAMDEN	**14.9**
Hempstead	HOPE	**12.3**
Arkansas	STUTTGART	**12.0**
Madison	HUNTSVILLE	**9.6**
Columbia	MAGNOLIA	**9.6**
Ashley	CROSSETT	**9.5**
Desha	MC GEHEE	**9.2**
Boone	HARRISON	**9.0**
Drew	MONTICELLO	**8.4**
Poinsett	TRUMANN	**8.3**
Cross	WYNNE	**7.5**
Franklin	OZARK	**6.0**
Johnson	CLARKSVILLE	**5.8**
Clay	PIGGOTT	**5.0**
Yell	DARDANELLE	**5.0**
Lincoln	STAR CITY	**5.0**
Bradley	WARREN	**3.6**
Cleveland	RISON	**3.5**

Prairie	HAZEN	**3.1**
Polk	MENA	**2.9**
Dallas	FORDYCE	**2.9**
Howard	NASHVILLE	**2.5**
Chicot	EUDORA	**2.4**
Scott	MANSFIELD	**2.2**
Marion	FLIPPIN	**1.9**
Woodruff	AUGUSTA	**1.8**
Pike	GLENWOOD	**1.4**
Van Buren	CLINTON	**1.3**
Calhoun	HAMPTON	**1.0**
Searcy	MARSHALL	**0.9**
Newton	JASPER	**0.6**

CAPACITY:

35 Points Available

All points awarded for "capacity" will be based on the experience and credentials provided in the proposal for ALL development team members working on NSP-assisted activities. If the applicant or a development team member has successfully completed the same or similar affordable housing activities in the past, it is possible to score up to 35 points. Less relevant experience, successful completion of different affordable housing activities, and fewer or less relevant qualifications of applicants will receive lesser points.

Affordable Housing Activity	
Completion and placement in service (PIS) of one or more HOME or CDBG funded housing project, with no outstanding compliance issues	5 points
Completion and placement in service (PIS) of one or more NSP1, NSP2 or Low-Income Housing Tax Credit funded housing projects, with no outstanding compliance issues	10 points
Completion and placement in service (PIS) of one or more combined Low-Income Housing Tax Credit and HOME funded housing project, with no outstanding compliance issues	15 points

One member of the proposed development team has obtained ADFA's HOME Certification	5 points

Years of Affordable Housing Development Experience	
1 to 3 Years	5 points
3 to 5 Years	10 points
6 to 10 Years	15 points
10 Year more	20 points

FINANCING:

20 Points Available

All points awarded for “financing” will be based on the degree to which NSP3 funds are leveraged with other financial resources and whether developer’s fee and other professional service fees are reduced to assist in furthering the ability of the development to produce affordable housing through further limitation of development costs without reduction of quality.

Any proposal which omits firm financial commitments for the type of activity proposed will receive no points, will be considered as not financially feasible, and will not be considered for an allocation of NSP funds.

Leveraging of NSP3 Funds	10 Points
Reduction of Developers fee to 7% of NSP3 allocation or less.	5 points
Reduction of Professional fees by more than 25%	5 points

QUALITY OF PLAN:

10 Points Available

All points awarded under this scoring criteria will be based on the overall feasibility of planned activities, the extent of need exhibited by the proposal and the extent to which those identified needs are addressed by the proposal, the partnering of various entities to provide additional supportive housing services where needed, and the inclusion of appropriate entities to complete the planned activities.

Market Needs – Overall Capture Rate	
1% to 20%	10 points
21% to 60%	5 points

61% to 70%	2 points
71% or greater	0 points
Related Supportive Services (ie. financial planning, budgeting, debt counseling, self-sufficiency training)	5 points

ULTIMATE NEIGHBORHOOD STABILIZATION GOALS:

10 Points Available

All points awarded under this scoring criteria will be based on the level of expected production and outcomes which result in increased neighborhood stabilization. Included in this scoring criteria will be the number of assisted units as compared to the number of units needing assistance in a defined area and the period of time for which applicant agrees to maintain the development as affordable housing beyond that which is required by this Substantial Amendment.

Producing more units than the HUD-established minimum number of units necessary to make an impact in the area	5 points
Agreement to extend affordability period beyond required number of years	5 points

THE MAXIMUM POINTS AVAILABLE FOR ANY PROPOSAL IS 100 POINTS.

Each category of points is capped at the maximum points stated for each category.